

FLATHEAD COUNTY PLANNING AND ZONING OFFICE
ZONING VARIANCE REPORT (#FZV-12-01)
KWOLEK
MARCH 19, 2012

A report to the Flathead County Board of Adjustment regarding a request by Albin and Mary Kwolek for a variance to Section 3.10.040(3)(B) “Bulk and Dimensional Requirements” for an “R-2 One Family Limited Residential” zone, requiring detached accessory structures to have a minimum front yard setback of 20 feet from the property line. The variance requested would apply to property located at 1920 Hodgson Road, which is accessed from an adjoining alleyway. The property is located within the Happy Valley zoning district.

The Flathead County Board of Adjustment will hold a public hearing on the variance request on April 3rd, 2012 beginning at 6:00 P.M. in the 2nd floor conference room of the Earl Bennett Building, 1035 First Avenue West, Kalispell. Documents pertaining to this application are available for public inspection at the Flathead County Planning and Zoning Office, also located on the second floor of the Earl Bennett Building.

I. APPLICATION REVIEW UPDATES

A. Land Use Advisory Committee/Council

The proposed variance is not within the advisory jurisdiction of a specific local land use advisory committee.

B. Board of Adjustment

The Flathead County Board of Adjustment will hold a public hearing on the proposed variance request on April 3rd, 2012 beginning at 6:00 P.M. in the 2nd floor conference room of the Earl Bennett Building, 1035 First Avenue West, Kalispell. This space is reserved for a summary of the Flathead County Board of Adjustment’s discussion and decision at that hearing.

II. GENERAL INFORMATION

A. Application Personnel

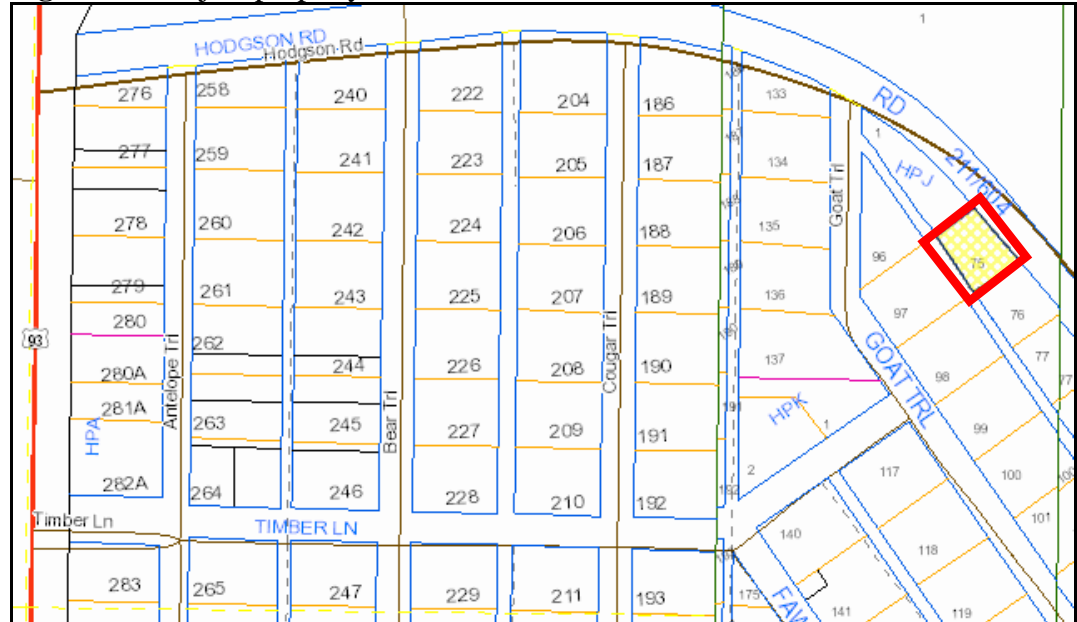
i. Applicant/Landowner

Albin and Mary Kwolek
1920 Hodgson Road
Whitefish, MT 59937
(406) 730-2670
Kwolek51@msn.com

B. Property Location

The subject property is located south of Whitefish at 1920 Hodgson Road, approximately 300 feet from the intersection with Goat Trail, and is accessed from an alleyway located between Goat Trail and Hodgson Road (see Figure 1 below). The property can be legally described as Lot 75 of the Happy Valley Home Sites Subdivision, located in Section 30, Township 30 North, Range 21 West, P.M.M., Flathead County, Montana. (see Figure 2 below).

Figure 1: Subject property outlined in red.



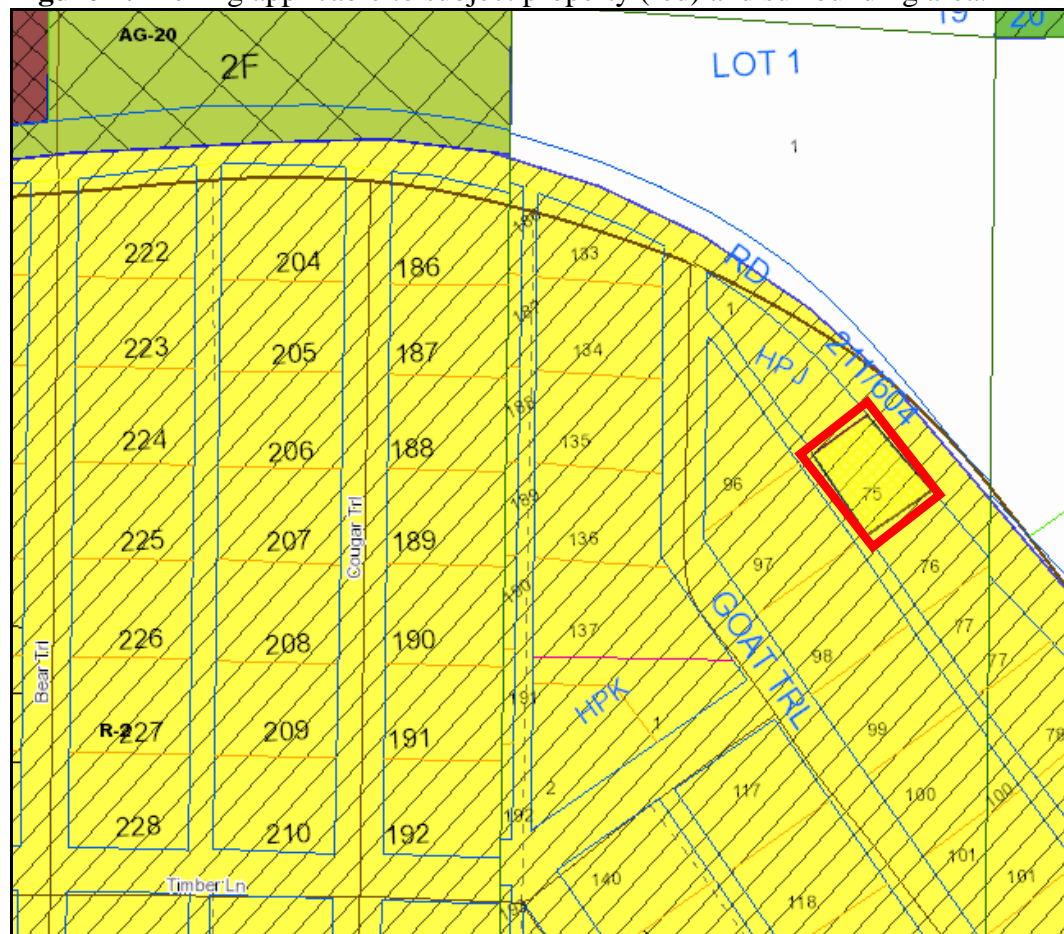
C. Existing Land Use(s) and Zoning

The subject property is located within the Happy Valley zoning district adopted May 18, 1988 and is currently zoned “R-2 One Family Limited Residential”, a district intended to *“provide for large-tract residential development. These areas will typically be found in suburban areas, generally served by either sewer or water lines.”* [FCZR Section 3.10.010] The property is currently developed with a single-family home and a small storage shed.

D. Adjacent Land Use(s) and Zoning

As shown by Figure 3 below, parcels immediately to the south, east, and west of the subject property are zoned “R-2 One Family Limited Residential.” The area located north of the subject property, across Hodgson Road, is unzoned. The area surrounding the subject property is primarily residential in nature or currently vacant, with lots approximately ½ an acre in size. The properties located across Hodgson Road are each approximately 5 acres.

Figure 2: Zoning applicable to subject property (red) and surrounding area.



E. Summary of Request

The applicant is requesting a variance to Section 3.10.040(3)(B) of the Flathead County Zoning Regulations regarding “Bulk and Dimensional Requirements” for property located within a “R-2 One Family Limited Residential” zone. This section of the regulations requires a detached accessory structure to have a minimum setback of 20 feet from the front property line. The applicant is requesting a variance to this section to reduce the required setback to 3 feet, in order to build a detached two car garage. The proposed garage will be approximately 20 feet wide by 20 feet long. Although the property’s address is Hodgson Road, the lot is accessed from an alleyway off Goat Trail. The only location the applicant has to build a garage is located on the east side of the property next to the single family residence. This is due to the steep nature of the lot, the location of applicant’s septic system, and the location of the applicant’s drainfield, as well as the drainfield for Lot 80. As shown in Figures 3 and 4, the applicant’s property is restricted by the placement of Lot 80’s primary and replacement drainfields. Therefore, no structures may be built in the rear area of the property.

Figure 3: Proposed layout for construction.

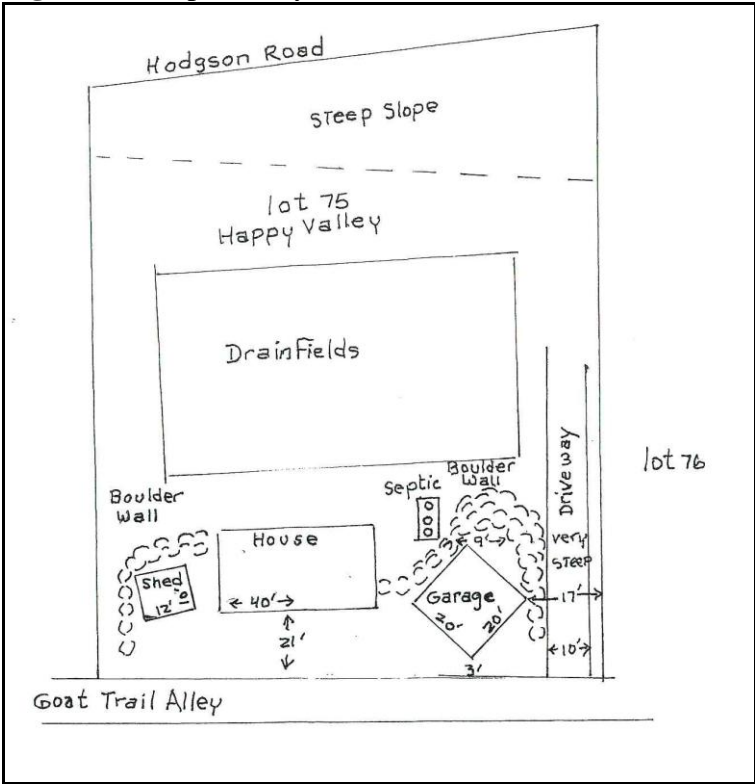
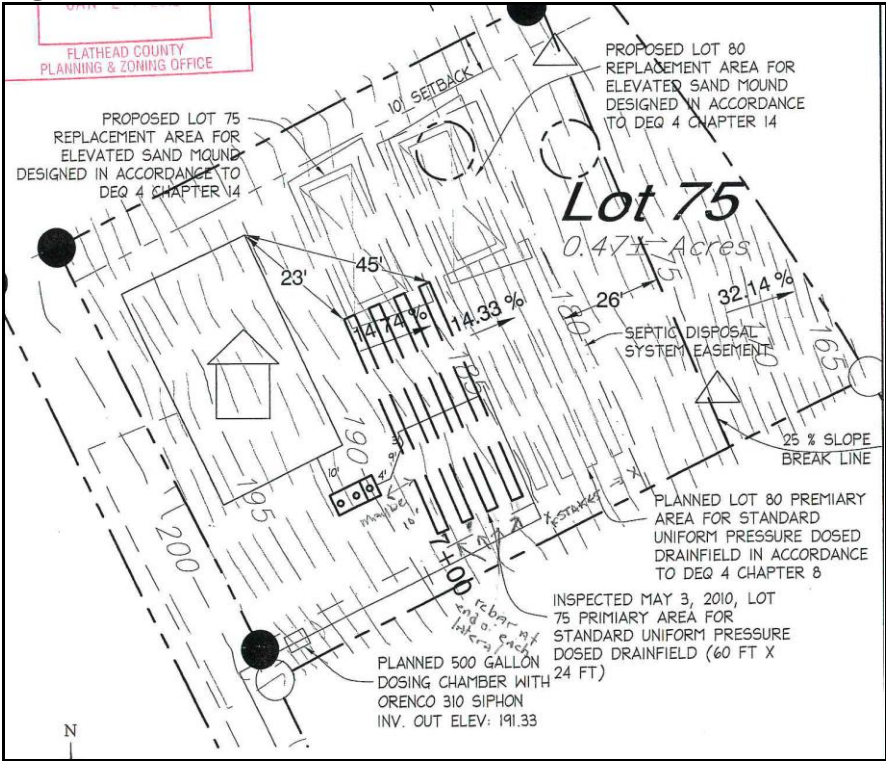


Figure 4: Location of Drainfields



F. Compliance with Public Notice Requirements

Notification was mailed to adjacent property owners within 150 feet of the subject property on March 9th, 2012, pursuant to Section 2.05.030(2) of the Zoning Regulations. Legal notice of the public hearing on this application will be published in the March 18th, 2012 edition of the Daily Interlake.

G. Agency Referrals

Agency referrals were sent to agencies listed below regarding the variance request.

- Happy Valley Water & Sewer District
 - Reason: The property is located within the Happy Valley Water & Sewer District service area.
- Flathead County Public Works Department
 - Reason: The property is accessed from a public roadway.
- Whitefish City Fire Department (Rural Response District)
 - Reason: The property is located within the Fire District.

III. COMMENTS RECEIVED

A. Public Comments

No written public comments have been received to date regarding the variance request. It is anticipated any individual wishing to provide public comment on the application will do so during the public hearing at the Board of Adjustment meeting scheduled for April 3rd, 2012.

B. Agency Comments

Comment was received from the following agency.

- Flathead County Public Works Department
 - Comment: The Department has no issues with the variance application. As with all requests for variances, these need to be approved by the Board of County Commissioners.

IV. CRITERIA REQUIRED FOR CONSIDERATION

Per Section 2.05.030 of the Flathead County Zoning Regulations, what follows are review criteria for consideration of a variance request, as well as suggested findings of fact based on review of each criterion. It should be noted Section 2.05.030 of the Flathead County Zoning Regulations states “No variance shall be granted unless the Board (of Adjustment) finds that all of the following conditions are met or found to be not pertinent to the particular case”:

A. Strict compliance with the provisions of these regulations will:

i. Limit the reasonable use of property;

Although the property is almost ½ an acre in size, it is restricted on the amount and location of buildable areas. The middle of the property, directly behind the existing single family residence, is unavailable for building. This is due to the location of the drainfield and replacement area for the existing structure, and the proposed location for Lot 80’s drainfield

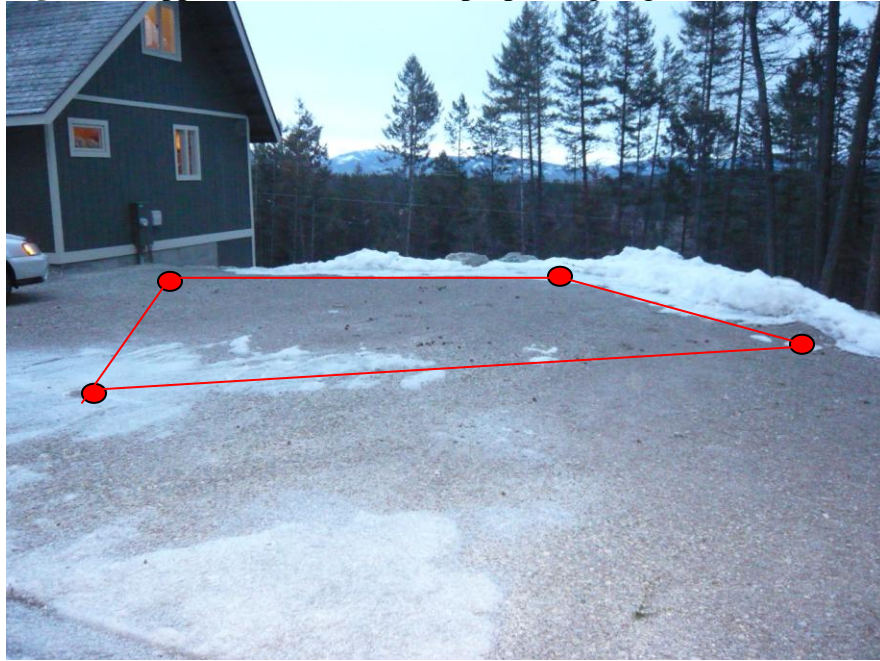
and replacement area. Past the drainfields, the property slopes very steeply downward towards Hodgson Road. While it is possible to build on the sloped area, the applicant cannot access the property from Hodgson Road. Staff contacted the Flathead County Road Department to determine if an approach permit would be an available option to the applicant. The Road Department stated that because of the limited site distance in the area and the limited breaking distance for vehicles, an approach permit would not be granted to the owners.

The only other location on the property able to accommodate a new structure is next to the existing residence. While there is a leveled terraced area, it is currently not wide enough for the placement of a structure meeting the required setbacks. However, it is not possible to add more fill due to the location for the existing septic system. (See Figure 5 below.) The existing terraced wall extends from the residence, around the septic system, then widens out for approximately 9 feet. The wall then curves back toward the alleyway, leaving room for an existing driveway required to access the rear drainfields. In order to construct the proposed garage on the existing terrace, the applicant has rotated the garage on a 45 degree angle to the alleyway, requiring extension into the setback. (See Figure 6 below.)

Figure 5: Location of septic system (in red) and terraced wall.



Figure 6: Approximate location of proposed garage.



Finding #1 - Strict compliance with the regulations would limit the reasonable use of property because an approach permit is not obtainable for access onto Hodgson Road, the location of the drainfield for Lot 80 restricts the majority of the lot, and the existing septic system limits the amount of area available for filling to accommodate a compliant structure.

ii. Deprive the applicant of rights enjoyed by other properties similarly situated in the same district.

The neighborhood in which the subject property is located is predominantly residential, although there are a few commercial lots located near Highway 93. Almost every residential property currently developed within the subdivision has a garage, either attached or detached, as well as every property located along the Goat Trail alley. If the applicant is required to build in strict compliance with the setback regulations, they would be deprived a right enjoyed by others in the district.

Finding #2 - Strict compliance with the regulations would deprive the applicant of rights enjoyed by other properties similarly situated in the same district because almost every other residential home has a garage, either attached or detached.

B. The hardship is the result of lot size, shape, topography, or other circumstances over which the applicant has no control.

The applicant's property is approximately 0.5 acres. However, the majority of the lot is reserved for the applicant's drainfield and the drainfield for Lot 80. (See Figure 4 above and Figure 7 below.) The drainfields' location was approved in

2007, before the applicant bought the property. Additionally, the topography at the rear of the lot and the Flathead County Road Department not permitting an approach off Hodgson Road, significantly limits the area available for construction. Therefore the hardship was not created by the applicant, and is the result of circumstances the applicant had no control over.

Figure 7: View from proposed garage location, outlining drainfield locations



Finding #3 – The applicant had no control over the hardship because it is the result of the lot’s topography, access constraints, the placement of the primary structure, and the location of the approved drainfields.

C. The hardship is peculiar to the property.

The majority of the lots within the Happy Valley Home Sites Subdivision do not have similar hardships. Most of the subdivision is located on generally flat ground, with only the lots along Hodgson Road containing topography constraints. Additionally, the applicant’s property contains a peculiar hardship unique to the subdivision because the majority of the lot is constrained by the drainfields for Lot 80. The lots adjoining the subject property do not have this issue, and those owners have all constructed single family residences with private garages. If the drainfields were not located on the applicant’s lot, there would be adequate space for a garage that could meet the required setbacks.

Finding #4 – The hardship is the result of a unique or peculiar situation on the applicant’s property because the lot is constrained by the drainfields associated with a neighboring lot, and the existing topography.

D. The hardship was not created by the applicant.

As discussed under Criteria IV.B above, the layout of the applicant's drainfield and the drainfield for Lot 80 was completed in 2007. Additionally, the location of the single family residence was established by the previous owner and builder. The applicants purchased the property as is, with knowledge of the existing constraints, but the request is reasonable, and multiple extenuating circumstances, discussed elsewhere (access, topography, drainfield placement) and taken together, create a unique hardship that is not entirely created by the applicant. The proposed placement of the garage, will allow all other setbacks to be met except for in the front yard. Due to the topography of the lot and the placement of the existing septic system, there is no other way to situate a garage on the property.

Finding #5 – The proposed hardship was not created by the applicant because the placement of the primary structure, the location of the drainfields, the location of the septic system, and the topography are outside of the applicant's control.

E. The hardship is not economic (when a reasonable or viable alternative exists).

The hardship does not appear to be economic based on rationale provided in the application for a variance. The applicants are requesting the variance in order to fit a 20 feet wide by 20 feet long two car garage on the property. Most two car garages are at least 20 feet wide by 22 feet long. The applicants are proposing to place the smallest size garage that will still accommodate their personal truck. Based on the location of the approved drainfields, as previously described, there are no other reasonable alternative locations for the private garage.

Finding #6 – The hardship does not appear to be economic because the location of the approved drainfields limits any alternative locations, and the applicants are proposing the smallest size garage that will still accommodate their personal vehicles.

F. Granting the variance will not adversely affect the neighboring properties or the public.

The proposed variance would have minimal to no impact on adjacent properties and the general public because the garage would be located approximately 17 feet from the adjacent side property line and approximately 3 feet from the Goat Trail alleyway. Since the garage will not extend into the alley, there should be no impacts to the visibility and width of the roadway, or existing traffic.

Finding #7 – Granting of the variance request would not have a significant impact on neighboring properties or the public because the proposed garage would be located approximately 17 feet from the adjacent lot, and approximately 3 feet from the Goat Trail alley, with no encroachments into the roadway.

G. The variance requested is the minimum variance which will alleviate the hardship.

As previously stated, there are no other alternative locations for the proposed garage. The existing drainfield for the single family residence and the drainfield for Lot 80 occupy the majority of the lot that could be used as potential buildable area. However, no structures may be built on top of the drainfield sites. Additionally, the Flathead County Road Department would not permit an approach off of Hodgson Road, therefore the garage cannot be built past the drainfields on the rear of the property. The only available location is next to the existing residence, which is also limited by the existing septic system. The minimum garage proposed is the smallest that would accommodate two personal vehicles. The applicants are not requesting a variance to allow, for example, a 60 foot by 40 foot garage and shop. However, the only option available to accommodate the garage on the property is to turn the garage on a 45 degree angle, which requires a front setback of 3 feet. This is the minimum setback required to alleviate the hardship.

Finding #8 – The variance requested is the minimum variance which would alleviate the hardship because there are no alternative locations available to construct the private garage, which is the smallest that would accommodate two personal vehicles.

H. Granting the variance will not confer a special privilege that is denied other similar properties in the same district.

Granting the requested variance will not confer a special privilege for the applicant that other properties are denied. Rather the opposite is the case. The applicant is proposing a private garage similar to what all other residential properties in the district already enjoy. The applicant is requesting the variance because there are no other alternative locations to construct the garage. As previously stated, the property is restricted by the location of multiple drainfields and the steep topography. All other residential properties located along the Goat Trail alley have private garages, both attached and detached.

Finding #9 – Granting of the variance will not confer a special privilege that is denied to other properties in the district because all other residential properties located on the alley have existing garages, and the property is restricted by the location of multiple drainfields.

V. SUMMARY OF FINDINGS

1. Strict compliance with the regulations would limit the reasonable use of property because an approach permit is not obtainable for access onto Hodgson Road, the location of the drainfield for Lot 80 restricts the majority of the lot, and the existing septic system limits the amount of area available for filling to accommodate a compliant structure.
2. Strict compliance with the regulations would deprive the applicant of rights enjoyed by other properties similarly situated in the same district because almost every other residential home has a garage, either attached or detached.

3. The applicant had no control over the hardship because it is the result of the lot's topography, access constraints, the placement of the primary structure, and the location of the approved drainfields.
4. The hardship is the result of a unique or peculiar situation on the applicant's property because the lot is constrained by the drainfields associated with a neighboring lot, and the existing topography.
5. The proposed hardship was not created by the applicant because the placement of the primary structure, the location of the drainfields, the location of the septic system, and the topography are outside of the applicant's control.
6. The hardship does not appear to be economic because the location of the approved drainfields limits any alternative locations, and the applicants are proposing the smallest size garage that will still accommodate their personal vehicles.
7. Granting of the variance request would not have a significant impact on neighboring properties or the public because the proposed garage would be located approximately 17 feet from the adjacent lot, and approximately 3 feet from the Goat Trail alley, with no encroachments into the roadway.
8. The variance requested is the minimum variance which would alleviate the hardship because there are no alternative locations available to construct the private garage, which is the smallest that would accommodate two personal vehicles.
9. Granting of the variance will not confer a special privilege that is denied to other properties in the district because all other residential properties located on the alley have existing garages, and the property is restricted by the location of multiple drainfields.

VI. CONCLUSION

Section 2.05.030(3) of the Flathead County Zoning Regulations states a variance shall not be granted unless all of the review criteria have been met or are found not to be pertinent to a particular application. Based upon the 9 draft findings of fact presented in this staff report, which are based on staff's research and the applicant's information, the variance request appears to meet all eight criteria for review.